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Report on Insurance Coverage for Lead Liability

Executive Summary

This report summarizes a survey conducted by OCI to review lead liability coverages available in Wisconsin as requested in the 1999 Wisconsin Act 113. The major writers of homeowner's and commercial multiple peril insurance were included in the survey.

There are 191 insurers authorized to write homeowner's insurance in Wisconsin. There are 259 insurers authorized to write business-related coverages called commercial multiple peril insurance (CMP). Some companies write both. (See Table E, 2004 Wisconsin Insurance Commissioner's Report.) To obtain a representative sample for this survey, OCI conducted a survey of 35 insurance companies that provide homeowner's insurance or a package of business-related coverages called commercial multiple peril insurance. Rental or residential landlord properties may be insured through either homeowner's or CMP policies depending upon the nature of the risk. OCI included the largest 20 writers of homeowner's and commercial multiple peril coverages in the state of Wisconsin. By including the top 20 writers in both categories, OCI captured in its analysis insurance companies that wrote approximately 75 percent of the homeowner's business and approximately 60 percent of the commercial multiple peril business.

Of the 35 insurers in the survey, 12 were listed only on the homeowner's list of largest homeowner's insurance writers in Wisconsin, 11 were listed only on the commercial multiple peril list, and 8 were listed on both the homeowner's and commercial multiple peril lists of largest writers. To complete the 35 insurers selected for the survey, OCI expanded its selection to include 4 companies that had previously been named by another source as writers of lead liability coverage within either homeowner's or CMP policies. That source was the National Center for Healthy Housing which listed writers of lead liability coverage as of 2001.

Of the 35 insurance companies responding to the survey, a total of 8 companies provided lead liability coverage through either their homeowner's lines or through their CMP lines. Six of the insurers made coverage available through both lines. Of those that offered coverage through the homeowner's policy, 4 of these companies provide the liability coverage limited to the face value of the policy, which would be consistent with coverage in other types of liability policies. A 5th company limited the coverage to \$10,000. The 6th offered \$100,000 of liability coverage for an extra cost as a buy-back endorsement removing the exclusion. The remaining 29 insurers report they exclude coverage for lead liability risk either by a specific lead exclusion in the policy or through the pollution liability exclusion contained in the policy.

Seven of the 8 companies reported that they provided commercial lead liability coverage for commercial residential policyholders, with certain limitations. Five of these insurers required the insured location to qualify through underwriting, 1 insurer required a lead-free certification as

a condition of coverage, and 1 offered \$100,000 of coverage for an additional cost as a buy-back endorsement removing the exclusion.

From the survey it is estimated that the companies offering homeowner's residential coverage for lead liability constitute approximately 45 percent of the market. For example, 1 insurer, American Family Mutual Insurance Company, insures about 26 percent of the residential market and limits coverage to \$10,000. The companies offering commercial residential coverage for lead liability constituted approximately 19 percent of the commercial multiple peril market, which includes insurance for business risks other than residential landlord businesses.

It should be noted that it is likely that lead liability coverage is generally more difficult to obtain for structures built before 1980 since lead-bearing paint was removed from the market in 1978. Companies providing lead liability coverage for properties built both before and after 1980 will use underwriting criteria to determine whether to provide coverage. While 1 insurer provided coverage in its commercial program when there was a no-lead-bearing paint certificate, for the most part, insurers use the condition of the structure along with its age as an indicator of the likely presence of lead-bearing paint since lead-bearing paints were legally used in housing units in the United States at least until 1978.

As indicated in the results of the survey there are insurers writing homeowner's and CMP policies that include coverage for lead liability. The coverage is subject to general policy limits or specific limits in some cases. As with most insurance products, homeowner's and CMP policy issuance is subject to underwriting. If significant risk issues are identified, including those related to the lead liability risk, an insurer may reject the application for policy issuance. The insurer may identify what remediation efforts would allow for the policy to be issued. Post remediation coverage may be available from insurers offering coverage once the risk has been mitigated by the remediation.

Because of the information collected in this survey OCI at this time is not suggesting or recommending legislative efforts be commenced for creation of a state residential lead liability fund. OCI encourages written statements and insurance complaints from individuals or businesses that have experienced difficulty finding coverage for the lead liability risk in order to continue to assess the availability and affordability of insurance for the risk.

I. Background

A. Statutory Basis

On May 22, 2000, the legislature published the 1999 Wisconsin Act 113 relating to the control of lead-bearing paint hazards. Act 113 established a broad spectrum of activities including investigations for the presence of lead, a process for lead-safe certification, immunity from liability for lead exposure, and a review of liability insurance.

The nonstatutory provisions of Act 113 provided that the Office of the Commissioner of Insurance (OCI) would review the insurance market for liability coverage on lead-bearing paint hazards. A copy of the pertinent Section of Act 113 follows:

(8) REPORT ON LIABILITY INSURANCE FOR LEAD PAINT HAZARDS. The office of the commissioner of insurance shall review the cost and availability of insurance in the private market that provides residential property owners with liability coverage for lead-bearing paint hazards. On the basis of the review, the office shall, no later than October 1, 2002, prepare and submit to the appropriate standing committees of the legislature in the manner provided under section 13.172 (3) of the statutes a report on whether such insurance is sufficiently affordable and sufficiently available in the private insurance market. If the office determines and provides in its report that such insurance is not either sufficiently affordable or sufficiently available in the private insurance market, the office shall submit drafting instructions to the legislative reference bureau for proposed legislation to create a state residential lead liability fund and shall include such proposed legislation in its 2003–05 biennial budget request under section 16.42 of the statutes.

As part of the review outlined in Act 113, OCI conducted a survey of lead liability coverage with the largest writers of property insurance. This report summarizes that survey and its results.

B. Lead Hazard Background

The human exposure to lead is derived in part from lead-bearing paint and liability for that exposure has been a concern of property owners and insurance companies, especially as lead relates to the health of children. Insurance companies are interested in the lead hazard risk since they are seen as a possible source to fund the cost of lead removal from a property or insure potential liability for lead poisoning affecting people that come in contact with an insured property.

Although the Environmental Protection Agency has documented significant improvement in the lead levels found in children, it reported that lead is found in most homes built before 1980. Lead-bearing paints were banned for use in the U.S. in all types of housing in 1978. Therefore, it is the homes and apartments built before 1980 that are likely to contain lead-bearing paints. Details about the lead hazards in housing and suggestions for detection and clean-up are available from the federal EPA, www.epa.gov/lead.

C. Insurance Industry Exclusions and Limited Coverage Options

The general property insurance policy has two sections pertinent to this report. One section provides coverages for damage owned by the insured (first-party coverages). The other section provides financial protection for liability claims brought against the insured for bodily injury or property damage (third-party coverages). The first-party coverage for lead-bearing paint hazards has not been provided to the owners of homes or multi-unit complexes, since the risk of lead-bearing paint either exists or does not exist in a structure and is not accidental or haphazard. The insurance industry would therefore consider lead remediation and removal as activities to maintain a structure, and are not insurable. However, the third-party coverage for liability exposure is potentially insurable. What exists in the insurance market is a mix of policies that exclude, provide a limited amount of coverage, or provide coverage up to the policy limits for liability resulting from lead exposure.

As the lead liability issue became more widespread, the Insurance Services Office, Inc. (ISO) submitted a form filing to OCI in 1997 that addressed the lead liability hazard. ISO provides professional services to a large number of property and casualty insurance companies by filing insurance forms and rating information to the various states. Once approved for use by OCI, the insurers contracting with ISO may use the forms ISO provides. The ISO form filing in 1997 limited the lead liability coverage for personal liability coverage resulting from "absorption, ingestion or inhalation of lead or the presence of lead in and on a building." The ISO form contained a limit of \$50,000 for a claim made or a suit brought for bodily injury or property damage because of lead exposure originating at the insured location. Although the form has been available, the extent of its use is not known.

II. The Survey and Findings

To review what is offered in the market, OCI mailed surveys to a sample of authorized writers of property and casualty insurance. The sample included the major writers of homeowner's and commercial multiple peril insurance business written in the state. OCI market share information indicated that the companies surveyed wrote about 74 percent of the Wisconsin 2003 homeowner's premium and 58 percent of the 2003 Wisconsin commercial multiple peril premium. Note that the commercial multiple peril business includes premium for all types of business package policies.

A. Survey Questions

Thirty-five property and casualty insurance companies were sent the survey containing four inquiries. The insurers contacted were either among the 20 largest writers of the related property and casualty coverages in Wisconsin or were known to have written policies in previous years that covered lead liability. OCI believes this group of authorized insurers would provide sufficient information to review the current status of lead liability coverage in Wisconsin.

The companies were asked to respond to the following questions and requests for information about lead-hazard liability coverage:

1. Does your company provide liability coverage for lead-based paint hazards for owners of commercial residential properties? If so, please describe the coverage, include a copy of the form(s) used and provide a list of the various lead liability coverages available along with their respective rates.
2. Does your company provide liability coverage for lead-based paint hazards for owners of personal residential properties? If so, please describe the coverage, include a copy of the form(s) used and provide a list of the various lead liability coverages along with their respective rates.
3. As of December 31, 2003, please provide the number of commercial and personal lines policies (including situations where endorsements provide the coverage addressed here) written by your company that provide liability insurance coverage for lead-based paint hazards.
4. Include any comments about the coverage addressed here. If your company is planning to change its product offerings related to liability insurance for the lead-based paint hazards, please describe those also.

B. Companies Surveyed

OCI sent its survey to the following thirty-five companies:

Acuity, a Mutual Insurance Company	Allstate Insurance Company
American Family Mutual Insurance Company	Auto-Owners Insurance Company
Badger Mutual Insurance Company	Capitol Indemnity Corporation
Church Mutual Insurance Company	The Cincinnati Insurance Company
Economy Premier Assurance Company	Federal Insurance Company
Fire Insurance Exchange	Foremost Insurance Company
Germantown Mutual Insurance Company	General Casualty Company of Wisconsin
Hartford Fire Insurance Company	Hawkeye Security Insurance Company
Integrity Mutual Insurance Company	Lumberman's Mutual Insurance Company
Michigan Millers Mutual Insurance Company	Regent Insurance Company
Rural Mutual Insurance Company	Secura Insurance, A Mutual Company
Secura Supreme Insurance Company	Select Insurance Company
Seneca Insurance Company	Sentry Insurance, A Mutual Company
Society Insurance, A Mutual Company	St. Paul Fire & Marine Insurance Company
Standard Fire Insurance Company	State Farm Fire & Casualty Company
Travelers Indemnity Company of Illinois	West Bend Mutual Insurance Company
Wilson Mutual Insurance Company	Wisconsin Mutual Insurance Company
Zurich American Insurance Company	

C. Findings from the Survey

The findings of the survey are different for personal lines coverages and commercial lines coverages. For personal lines coverages, 6 companies stated that they provide liability coverage for lead exposures. The responses from Auto-Owners Insurance Company, Badger Mutual Insurance Company, Federal Insurance Company, and

State Farm Fire & Casualty Company indicated that they do not exclude the lead-paint exposure from their personal residential property policies. Note that these policies probably include owner-occupied housing units that meet certain underwriting criteria related to the condition of the property. For policies that do not include an exclusion, the amount for personal liability coverage listed on the declarations page of the policy would apply to lead liability. Two of the 6 companies provided the coverage in only certain situations or in limited amounts. The response from American Family Mutual Insurance Company indicated that its policies include an exclusion but that a limited amount of coverage (\$10,000) was automatically added to personal lines policies. The response from Wilson Mutual Insurance Company stated that its policy excludes the lead liability risk but stated that it offers a buy-back option for \$100,000 of lead liability coverage. Wilson Mutual Insurance Company said that six of its personal lines residential policies include this option to provide some limited lead liability coverage.

Seven insurance companies indicated that they provide some level of lead hazard liability coverage in their commercial residential policies. The responses from Allstate Insurance Company, Auto-Owners Insurance Company, and State Farm Fire & Casualty Company indicated that they do not exclude the coverage, which is a similar situation to that described in the previous paragraph for personal lines policies. Federal Insurance Company stated that it adds a specific lead liability exclusion to certain policies and they estimated that 10 percent of their commercial residential policies contain their lead liability exclusion. With a similar outcome, Cincinnati Insurance Company stated that it adds a lead liability exclusion to its commercial policies and that 10 percent of its business owner's package policies and 60 percent of its commercial liability policies contain the lead liability exclusion. For policies that do not exclude lead liability coverage, the amount listed for general liability coverage on the declarations page of the policy would apply to claims for lead liability. The response from Wilson Mutual Insurance Company stated that its policy excludes the lead liability risk but stated that it offers a buy-back option for \$100,000 of lead liability coverage. Wilson Mutual Insurance Company said that one of its commercial lines residential policies includes this option to provide some lead liability coverage. American Family Mutual Insurance Company indicated that it waives the exclusion for lead liability hazards if there is a certificate that no lead paint exists on the property. For these qualifying policies of American Family Mutual Insurance Company, the policy limits for liability would apply.

In Wisconsin there is an insurance plan, the Wisconsin Insurance Plan (WIP), designed to insure many of the property risks rejected by the standard market of licensed insurance companies. The WIP offers a homeowner's-type package policy that provides coverage for property loss and includes \$100,000 of personal liability coverage. This policy is available for qualified one- and two-unit owner-occupied residences. The WIP homeowner's-type policy does not exclude liability for lead exposure. However, the WIP policy available for commercial residential policies does not include liability coverage and therefore provides no lead liability coverage.

A comparison of cost is not straightforward, since in the four personal lines responses and three commercial lines responses the lead liability coverage was part of the overall liability coverage provided by the policy. Wilson Mutual Insurance Company, however, offers an endorsement which would then have a separate cost.

It charges \$100/year for the \$100,000 provided if the property is a one- or two-unit residence and \$140/year if the property is a three- or four-unit residence.

III. Conclusion

The survey shows that, although there are insurers offering limited liability coverage for lead liability exposures, the policies issued by the vast majority of the 35 insurers responding to the survey contain language that would exclude liability coverage for the lead exposure risk. The report lists 6 insurers that offer either limited coverage, a coverage option, or automatically provide coverage in a personal lines residential insurance policy such as a homeowner's policy covering an owner-occupied duplex. The survey results also show that 7 insurers of commercial lines properties either offer a coverage option or automatically provide coverage for properties that qualify. Commercial lines properties would include non-owner occupied housing units and often includes housing complexes larger than four units whether or not they are owner-occupied.

At this time, OCI is not pursuing a residential lead liability fund as provided by Act 113. However, OCI notes that the availability and the affordability of lead liability coverage are important issues for monitoring and may further evaluate the need for a lead liability fund. OCI encourages written statements and insurance complaints from individuals or businesses that have experienced difficulty finding coverage for the lead liability risk in order to continue to assess availability and affordability issues and the feasibility of a lead liability fund.